

MARKETING HARASSMENT AS THE FACTS OF UNFAIR COMPETITION

Abstract

This master's thesis titled "Marketing harassment as the facts of unfair competition" focuses on the legal regulation of marketing harassment, which was introduced by Act No. 89/2012 Sb, Civil Code. This Act lays out what is considered the statutory facts of unfair competition. These particular facts concern the phenomenon of unsolicited advertising that is unprecedentedly common in present-day society.

The establishment of the institute of "marketing harassment" in the new Czech Civil Code can be considered a positive measure taking into account that its purpose is to protect the privacy of a legal entity. However, the very formulation of marketing harassment in the abovementioned Act can hardly be judged as a distinctively positive one. The objective of this thesis is not only a detailed analysis of marketing harassment itself and evaluation of its positives and negatives, but also a comparison with the regulation of similar issues found in other regulations as well as self-governing regulations (specifically in the Code of Advertising). The attempt to outline possible changes in these facts in terms of *de lege ferenda* is an integral part of this thesis.

The thesis is divided into five chapters.

The first chapter contains a brief overview of unfair competition since marketing harassment constitutes an immanent part of this concept. This chapter outlines the basic features of the development of regulation of unfair competition and offers a short treatise on the objectives and reasons for its regulation.

The second chapter focuses on the general clause of unfair competition, as it is to be fulfilled, along with the conditions set in the section 2986 of the Civil Code, for any action to be considered marketing harassment. The introduction briefly evaluates the meaning of the general clause in the context of regulation of unfair competition. Conditions of the general clause, in regard of marketing harassment, are listed and analysed in individual subchapters.

The third chapter is the core of this thesis and focuses on marketing harassment itself. It contains a general introduction to the facts of marketing harassments, its benefits and definition, including the controversy of its designation. The first subchapter is concerned with the so-called "positive" definition of marketing harassment and its division into the individual partial facts. Expository issues, which are common for both partial facts of the case, are further analysed. In the second subchapter, the so-called "negative" definition of marketing harassment is examined, including the conditions of its application and its importance.

The fourth chapter is devoted to the analysis of respective individual regulations and self-governing regulations, specifically those introduced in the Code of Advertising, which adjust the relevant issues as marketing harassment. These regulations are compared and the positives and negatives of the different wording they contain are evaluated. Attention is also paid to their significance in relation to the interpretation of marketing harassment in terms of the definition and connotation of certain legal concepts.

The fifth chapter addresses the issue of protection against unfair competition with the major focus on special adjustment contained in the regulation of unfair competition as stated in the Civil Code, with reference to the facts of marketing harassment.